

[10121/01301 - 99-0090]

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants : TRABADA et al.  
Serial No. : 10/753,848  
Filed : January 8, 2004  
For : Endoluminal Access Devices and Related Methods of Use  
Group Art Unit : 3731  
Examiner : TBA

Mail Stop: Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION OF PETITION UNDER 37 C.F.R. § 1.47(a)**

This is in response to the Decision Refusing Status Under 37 C.F.R. § 1.47(a) ("the Decision") mailed on December 30, 2004. Applicants hereby request reconsideration of the Decision for the reasons stated below.

Page 1 of 4

**BEST AVAILABLE COPY**

LAW OFFICES OF  
**FAY KAPLUN & MARCIN, LLP**  
INTELLECTUAL PROPERTY LAW

130 BROADWAY, SUITE 702  
NEW YORK, NEW YORK 10038  
PHONE: (212) 619-6000  
FAX: (212) 619-0276  
WWW.FKMIPLAW.COM

**RECEIVED**  
**CENTRAL FAX CENTER**  
**FEB 08 2005**

**FACSIMILE COVER SHEET**

**FAX NO** : 703-872-9306  
**TO** : Nancy Johnson  
Senior Petitions Attorney  
**FROM** : Oleg F. Kaplun  
**DATE** : February 8, 2005  
**SUBJECT** : U.S. Patent Appln Serial No. 10/753,848  
for Endoluminal Access Devices and Related Methods of Use  
Our Ref.: 99-0090

**NUMBER OF PAGES INCLUDING COVER : 18**

---

**MESSAGE:**

Dear Ms. Johnson:

Please see the attached Courtesy copy.

Thank you  
Tamanika Matthew  
Paralegal to Oleg F. Kaplun

**IF ANY PAGES WERE NOT RECEIVED OR ARE ILLEGIBLE, PLEASE CALL (212) 619-6000 AS SOON AS POSSIBLE**  
The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us by telephone, and return the original message to us at the above address via the U.S. Postal Service. We will reimburse any costs you incur in notifying us and returning the message to us. Thank you.

**BEST AVAILABLE COPY**

[10121/01301 - 99-0090]

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE****RECEIVED  
CENTRAL FAX CENTER  
FEB 08 2005**

Applicants : TRABADA et al.  
Serial No. : 10/753,848  
Filed : January 8, 2004  
For : Endoluminal Access Devices and Related Methods of Use  
Group Art Unit : 3731  
Examiner : TBA

Mail Stop: Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Certificate of Facsimile Transmission Under 37 CFR 1.8**

I hereby certify that this paper is being facsimile transmitted to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, Fax (703) 872-9306 on the date shown below:

By:

Date: February 8, 2005

Oleg F. Kaplun (Reg. No. 45,559)

**TRANSMITTAL**

Transmitted herewith please find a Request for Reconsideration of Petition for filing in the above-identified application. In addition, enclosed are copies of Exhibits 1- 6 which establish the basis of the Petition to Reconsider. No fees are believed to be required. However, the Commissioner is hereby authorized to charge the Deposit Account of **Fay Kaplun & Marcin LLP No. 50-1492** any additional fees. A copy of the paper is enclosed for this purpose.

Dated: February 8, 2005

By:

Oleg F. Kaplun (Reg. No. 45,559)

Fay Kaplun & Marcin, LLP  
150 Broadway, Suite 702  
New York, N.Y. 10038  
(212) 619-6000 (telephone)  
(212) 619-0276 (facsimile)

**BEST AVAILABLE COPY**

### REMARKS

On January 8, 2004, Applicants filed the above-identified application ("the Application"). The Application, which was filed without an executed declaration, listed the following three inventors: Mr. Trabada, Mr. Durgin and Mr. Sakal.

On April 24, 2004, the USPTO issued a Notice to File Missing Parts requesting that Applicants provide an executed declaration.

On November 22, 2004, Applicants filed a Response to the Notice along with a Petition under C.F.R. § 1.47(a) ("the Petition") requesting acceptance of the Application without declaration executed by one of the joint inventors, Mr. Trabada. The Response included a declaration executed by the remaining joint inventors, Messrs. Durgin and Sakal. In addition, Applicants submitted documents detailing Mr. Trabada's obligation to execute the declaration, the Applicants' diligent efforts to contact Mr. Trabada and his subsequent refusals to execute the declaration.

On December 30, 2004, the USPTO issued a Decision denying this Petition. The Decision indicated that the documentary evidence submitted with the Petition failed to make sufficiently clear that Mr. Trabada was presented with a copies of all the application papers (i.e., specification, claims, drawings and oath/declaration). (*See the Decision, p. 1*).

Applicants respectfully request reconsideration of the Decision in view of the evidence submitted herewith demonstrating that the specification, claims and drawings along with the declaration were sent to Mr. Trabada on at least five (5) occasions.

In particular, on January 11, 2001, a letter along with a draft application including specification, claims and abstract was sent to Mr. Trabada at his last known address. A copy of the January 11, 2001 letter is attached hereto as Exhibit I.

On February 22, 2001, another letter was sent to Mr. Trabada which included a second copy of the draft application including specification and abstract. A copy of the February 22, 2001 letter is attached hereto as Exhibit II.

On March 10, 2002, yet another letter was sent to Mr. Trabada which included a final draft of the Application including specification and abstract along with declaration and assignment for his signature. A copy of the March 10, 2002 letter is attached hereto as Exhibit III.

On July 26, 2002, a letter was sent to Mr. Trabada enclosing a revised draft of the Application including specification and abstract, a declaration and an assignment for his signature. A copy of the July 26, 2002 letter is attached hereto as Exhibit IV.

On November 18, 2002, a letter was sent to Mr. Trabada enclosing a second final draft of the Application including specification and abstract along with declaration and assignment for his signature. A copy of the November 18, 2002 letter is attached hereto as Exhibit V.

On June 7, 2004, a letter was sent to Mr. Trabada which indicated that the Application had been filed on January 8, 2004 and which included a declaration and an assignment for his signature. The letter indicated that the application was filed without an executed declaration and requested that Mr. Trabada execute the attached declaration. A copy of the June 7, 2004 letter is attached hereto as Exhibit VI.

Each of the aforementioned letters was sent to Mr. Trabada at his last known address, and, with the exception of the June 7, 2004 letter, enclosed a copy of the application including specification and abstract along with a declaration. Each letter further included an assignee-addressed, stamped envelope to facilitate return of the executed declaration.

To this date, Mr. Trabada has failed to execute the declaration, although the entire

application has been presented to him on the numerous occasions as detailed above.

Abandonment of the Application for failure to provide an executed declaration from Mr. Trabada would result in irreparable damage to Mr. Durgin and Mr. Sakal who have each executed a declaration and an assignment, and to the assignee of the Application.

Therefore, Applicants respectfully request that in view of the statements made herein and documents enclosed herewith, the Decision to deny the Petition be reconsidered and the Petition be granted. Favorable consideration of the renewed Petition is respectfully requested.

Respectfully submitted,

Date: February 8, 2005

By 

Greg F. Kaplun (Reg. No. 45,559)

Fay Kaplun & Marcin, LLP  
150 Broadway, Suite 702  
New York, NY 10038  
Tel: 212-619-6000  
Fax: 212-619-0276